

perpetrating this fraud.

193. Plaintiffs were injured by this conspiracy to commit fraud. But for that conspiracy, plaintiffs would have received the full face value of their debentures, plus accrued interest.

THIRD CAUSE OF ACTION: GROSS NEGLIGENCE

194. Plaintiffs incorporate by reference paragraphs 1-187 and 191.

195. By virtue of their positions as debtor in a bankruptcy proceeding, as the chief financial officer of the debtor, as senior creditors of the debtor, and as proponents of a bankruptcy reorganization plan that would drastically affect the junior creditors, defendants owed the junior creditors of Genesis a duty of care, including the duty to provide fair, accurate and complete information.

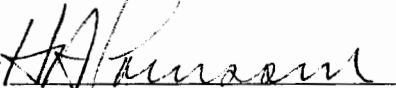
196. Defendants violated that duty of care by disseminating false and misleading financial information that misled the bankruptcy court and the plaintiffs concerning the true financial condition and prospects of Genesis. Defendants' conduct was such an extreme and severe departure from due care as to constitute gross negligence, and was therefore not released as a result of the Genesis bankruptcy.

197. Plaintiffs were injured by defendants' gross negligence. But for that gross negligence, plaintiffs would have received the full face value of their debentures, plus accrued interest.

WHEREFORE, plaintiffs seek an award of damages against the defendants, jointly and severally, in an amount to be determined by the Court, but not less than \$200 million, plus interest, costs and fees incurred in this action, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 27, 2004

POMERANTZ HAUDEK BLOCK
GROSSMAN & GROSS LLP

By 

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Attorneys for Plaintiffs

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re Genesis Health Ventures, Inc. et al.

Debtors,

Richard Haskell et al.,

Appellants,

v.

Goldman, Sachs & Co. et al.,

Appellees.

Case No. 00-2692 (JHW)

(Jointly Administered)

Adv. No. 04-53375 (JHW)

**APPELLANTS' DESIGNATION OF ITEMS IN RECORD ON APPEAL
AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Richard Haskell et al., by and through their counsel, hereby designate, pursuant to Fed. R. Bankr. P. 8006, the items to be included in the record on appeal and the statement of issues to be presented on appeal in connection with the Appellants' Notice of Appeal filed on May 10, 2005, from the Order and Judgment of Dismissal of the action entered by the Honorable Judith H. Wizmur, U.S. Bankruptcy Judge, on May 10, 2005. The Bankruptcy Court's amended opinion granting defendants' joint motion to dismiss was issued on or about May 4, 2005.

DESIGNATION OF ITEMS

1. Copy of complaint as filed in the Supreme Court of the State of New York, dated January 27, 2004 (attached as exhibit A).¹

¹ No copy of the complaint was found in the court's file in either the District Court or the Bankruptcy Court.

2. Notice of Removal from Supreme Court, County of NY filed by Defendants on 2/16/04, filed 3/12/04 (U.S. District Court, Docket No. 1)
3. Order that this action is transferred to the USDC for the District of Delaware, filed 3/12/04 (U.S. District Court, Docket No. 6)
4. Stipulation referring case to the U.S. Bankruptcy Court for District of DE with proposed order; So Ordered, filed 4/23/04 (U.S. District Court, Docket No.18-1)
5. Motion by Goldman Sachs & Co., Mellon Bank NA, Highland Capital, Genesis Health, George V. Hager to Dismiss Plaintiffs' Complaint, filed 4/23/04 (U.S. District Court, Docket No.19)
6. Appendix of Exhibits to Joint Motion to Dismiss Plaintiffs' Complaint Filed by Goldman Sachs & Co., Mellon Bank NA, Highland Capital, Genesis Health, George V. Hager Volumes I- IV, filed 4/23/04 (U.S. District Court, Docket Nos. 20-23)
7. Motion by Highland Capital to Dismiss, filed 4/23/04 (U.S. District Court, Docket No. 26)
8. Opening Brief Filed by Highland Capital in support of motion to Dismiss, filed 4/23/04 (U.S. District Court, Docket No. 27)
9. Order; having received a stipulation by the parties for referral of this action to the United States Bankruptcy Court for the District of DE (D.I. 18); the case is referred to the judges of the United States Bankruptcy Court for the District of DE, filed 4/27/04 (U.S. District Court, Docket No. 28)(also filed as U.S. Bankruptcy Court, Docket No. 1)
10. Response to and Memorandum in Opposition to Motion to Dismiss, filed 6/21/04 (U.S. Bankruptcy Court, Docket No. 16)
11. Reply of Highland Capital Management, LP, to Plaintiffs' Opposition to Joint Motion to Dismiss, filed 7/12/04 (U.S. Bankruptcy Court, Docket No. 22)

12. Memorandum of Law of Mellon Bank, N.A.'s Supplemental Memorandum in Support of Motion to Dismiss with exhibits, filed 7/12/04 (U.S. Bankruptcy Court, Docket No. 23)
13. Goldman Sachs and Co.'s Supplemental Reply to Plaintiffs' Opposition to Joint Motion to Dismiss Plaintiffs' Complaint, filed 7/12/04 (U.S. Bankruptcy Court, Docket No. 24)
14. Notice of Filing of Amended Exhibit Z to the "Appendix of Exhibits to Defendants' Joint Motion to Dismiss Plaintiffs' Complaint, filed 7/12/04 (U.S. Bankruptcy Court, Docket No. 25)
15. Defendants' Joint Reply to Plaintiffs' Opposition to Motion to Dismiss Plaintiffs' Complaint, filed 7/12/04 (U.S. Bankruptcy Court, Docket No. 27)
16. Exhibits to Defendants' Joint Reply to Plaintiffs' Opposition to Motion to Dismiss Plaintiffs' Complaint, filed 7/13/04 (U.S. Bankruptcy Court, Docket No. 28)
17. Opinion Issued By the Honorable Judith H. Sizmur, Dated April 27, 2005, On The Joint Motion to Dismiss Defendants' Joint Reply to Plaintiffs' Opposition to Motion to Dismiss Plaintiffs' Complaint, filed 4/27/05 (U.S. Bankruptcy Court, Docket No. 35)
18. (Amended) Opinion Issued by The Honorable Judith H. Wizmur, on Joint Motion To Dismiss Defendants' Joint Reply to Plaintiffs' Opposition to Motion to Dismiss Plaintiffs' Complaint, filed 5/3/05 (U.S. Bankruptcy Court, Docket No. 36)
19. Order Dismissing Plaintiffs' Complaint, filed 5/10/05 (U.S. Bankruptcy Court, Docket No. 39)
20. Notice of Appeal of Order Dismissing Plaintiffs' Complaint, filed 5/10/05 (U.S. Bankruptcy Court, Docket No. 40)
21. This Appellants' Designation and Statement of Issues, filed 5/20.05.

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether, in dismissing plaintiffs' complaint for failure to state a claim, the Bankruptcy Court erred as a matter of law, in holding that its determination of the enterprise valuation of the debtor Genesis Health Ventures, Inc.(n/k/a Neighborcare, Inc.)("Genesis") was entitled to res judicata and collateral estoppel effect even though that determination was procured by fraud. In this connection, where the complaint alleged that the fraud was not, and could not have been, discovered prior to the Court's determination of enterprise value, did the Bankruptcy Court err in resting its determination on the proposition that "plaintiffs do not contend that the defendants wrongfully concealed material facts from them prior to confirmation"?
2. Whether, in dismissing plaintiffs' complaint, the Bankruptcy Court erred in holding that plaintiffs' claims against Genesis were time-barred under 11 U.S.C. § 1144 because plaintiffs' claims for damages would constitute a de facto "revocation" of Genesis' plan of reorganization.
3. Whether, in dismissing plaintiffs' complaint, the Bankruptcy Court erred in holding that if a bankruptcy reorganization plan, including its bankruptcy discharge, were procured through fraud, the bankruptcy discharge was nonetheless enforceable.
4. Whether, in dismissing plaintiffs' complaint, the Bankruptcy Court erred in holding that the discharge language barred plaintiffs' claims, which were based on willful misconduct and recklessness in connection with the bankruptcy proceedings, even though the discharge explicitly excluded these very types of claims?

Dated: May 19, 2005

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of May, 2005, he caused a true and correct copy of the foregoing **APPELLANTS' DESIGNATION OF ITEMS IN RECORD ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL** to be served upon the following counsel by hand delivery:

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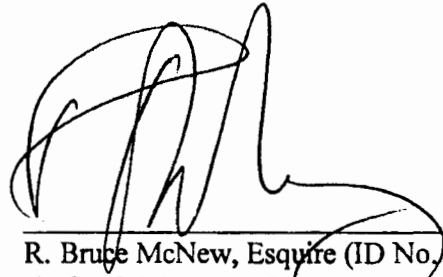
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May 19, 2005



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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	x	
In re Genesis Health Ventures, Inc. et al	:	Case No. 00-2692 (JHW)
Debtors,	:	(Jointly Administered)
	:	
	:	
Richard Haskell et al.,	:	Adv. No. 04-53375 (JHW)
Plaintiffs,	:	
v.	:	
Goldman, Sachs & Co. et al.,	:	
Defendants.	:	
	x	

**APPELLEES' DESIGNATION OF ADDITIONAL
ITEMS FOR RECORD ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8006, Neighborcare Inc. (one of the Reorganized Debtors, sued as "Genesis Health Ventures, Inc.," its former corporate name), Goldman, Sachs & Co., Mellon Bank, N.A., Highland Capital Management, L.P., and George V. Hager, Appellees, hereby designate the following additional items as the Record on Appeal:

1. Letter to United States District Judge Naomi Reice Buchwald from Barry G. Sher, Fried, Frank, Harris, Shriver & Jacobson LLP, dated February 17, 2004.
2. Letter to United States District Judge Naomi Reice Buchwald from H. Adam Prussin, Pomerantz Haudek Block Grossman & Gross LLP, dated February 23, 2004.
3. Stipulation and [Proposed] Order Extending time to Answer, Move or Otherwise Respond, dated February 24, 2004.
4. Order Transferring Case to the District of Delaware, dated March 4, 2004 and entered March 8, 2004.

5. Stipulation and Order Extending Defendants' Time to Answer, Move, or Otherwise Respond, filed April 23, 2004.
6. Defendants' Motion for Order Granting Leave to Exceed Page Limit Requirements with respect to Defendants' Joint Motion to Dismiss Plaintiffs' Complaint, dated and filed April 23, 2004 (U.S. District Court for the District of Delaware, Docket No. 24)
7. Notice of Hearing Re: Defendants' Joint Motion to Dismiss Plaintiffs' Complaint [Case No. 04-CV-157; Docket No. 19], dated May 20, 2004 (U.S. Bankruptcy Court for the District of Delaware, Bankruptcy Petition No. 00-02692, Docket No. 2235)
8. Order Granting Motion to Allow Leave to File Oversize Brief, signed June 28, 2004 and entered July 6, 2004 (U.S. Bankruptcy Court for the District of Delaware, Adversary Proceeding No. 04-53375, Docket No. 21)
9. Transcript of July 16, 2004 Hearing on Oral Argument of Motions to Dismiss Complaint.
10. Certification of Counsel Regarding Order Dismissing Plaintiff's Complaint, dated and filed May 3, 2005 (U.S. Bankruptcy Court for the District of Delaware, Adversary Proceeding No. 04-53375, Docket No. 37; U.S. Bankruptcy Court for the District of Delaware, Bankruptcy Petition No. 00-02692, Docket No. 2285).
11. Bankruptcy Court Docket Sheets in In re Genesis Health Ventures, Inc., et al., Case No. 00-2692 (JHW).

Dated: May 31, 2005
Wilmington, Delaware

Respectfully submitted,

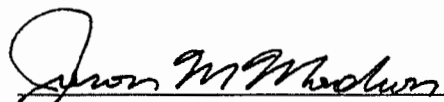
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CERTIFICATE OF SERVICE

I, Jason M. Madron, do hereby certify that on May 31, 2005 a copy of the foregoing **Appellees' Designation of Additional Items for Record on Appeal** was served on the parties on the attached list and in the manner indicated thereon


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Via First Class (Non-Local)

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